

ADM-11.02, "Employee Grievance and Appeals Procedures," March 1, 2008

SCDC POLICY/PROCEDURE

NUMBER: ADM-11.02

TITLE: EMPLOYEE GRIEVANCE AND APPEALS PROCEDURES

ISSUE DATE: March 1, 2008

RESPONSIBLE AUTHORITY: DIVISION OF HUMAN RESOURCES

OPERATIONS MANUAL:ADMINISTRATION

SUPERSEDES: ADM-11.02 (July 1, 2004)

RELEVANT SCDC FORMS/SUPPLIES: 16-33

ACA/CAC STANDARDS:4-ACRS-7E-07, 4-4048

STATE/FEDERAL STATUTES: State Employee Grievance Procedure Act, 8-17-110 et seq.

THE LANGUAGE USED IN THIS POLICY/PROCEDURE DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE AGENCY. THIS POLICY/PROCEDURE DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS. THE AGENCY RESERVES THE RIGHT TO REVISE THE CONTENTS OF THIS POLICY/PROCEDURE, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

PURPOSE: To outline the establishment and administration of a formal grievance and appeals system whereby covered state employees may file a complaint when they feel they have been subjected to unfair treatment.

POLICY STATEMENT: In order to uphold the professional integrity of the Department, the Agency will establish an employee grievance and appeals system whereby covered state employees may file a written complaint. Under no circumstances will any employee be subjected to reprisal, prejudice, corrective action, or retaliation as a result of exercising his/her grievance and appeals rights under this policy/procedure. (4-ACRS-7E-07, 4-4048)

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### SPECIFIC PROCEDURES:

1. **DEVELOPMENT AND RESPONSIBILITY:** The Division Director of Human Resources will be responsible for the development, implementation, management, and administration of an Employee Grievance and Appeals System (EGAS) applicable to all covered employees of the South Carolina Department of Corrections (SCDC). The system must be reviewed and approved for procedural correctness by the South Carolina Office of Human Resources prior to system-wide implementation. (4-ACRS-7E-07, 4-4048)

2. **GRIEVABLE AND APPEALABLE ACTIONS:** The following actions are considered grievable and/or appealable under the Agency's EGAS:

- Terminations, demotions, and suspensions (disciplinary and administrative);
- Salary decreases based on performance evaluations;
- Reclassifications are considered grievable if the Department, or appealable if the State Human Resources Director, determines there is a material issue of fact that the action is a punitive reclassification;
- Reductions-in-force are considered grievable if the Department, or appealable if the State Human Resources Director, determines there is a material issue of fact that the Department inconsistently and/or improperly applied the Agency's reduction-in-force plan or policy; (See SCDC Policy/Procedure ADM-11.05, "Reduction-in-Force," for information.)
- Involuntary reassignments of an employee greater than 30 miles from his/her current work location to another work location;
- Promotions are not adverse employment actions which may be considered grievable or appealable except in instances where the Agency or, in the case of appeals, the State Human Resources Director, determines that there is a material issue of fact as to whether or not the Agency has considered a qualified covered

employee for a position for which the employee formally applied or would have applied if the employee had known of the promotional opportunity. (However, when the Agency promotes an employee one organizational level above the promoted employee's former level, that action is not grievable or appealable for any other qualified covered employee. Failure to be selected for a promotion is not considered an adverse employment action which can be considered for a grievance or an appeal.)

3. NON-GRIEVABLE ACTIONS: The following actions are not grievable and/or appealable under the Agency's EGAS:

- Written warnings or disciplinary probation periods;
- EPMS appraisals;
- Reclassifications, reassignments, and transfers within the same pay band;
- Demotions when an employee is demoted prior to serving six (6) months of satisfactory service in the higher class (band) with a higher state salary range, and provided the demotion is not to a lower class (band) with a lower state salary range than the class from which the employee was promoted; and
- Voluntary reassignments or resignations. [NOTE: An employee's failure to report to duty for three (3) consecutive days without contacting the Agency is considered job abandonment and a voluntary resignation.]

If it is determined that the matter is not grievable, the covered employee will be advised in writing by the Division Director of Human Resources or a designee, normally within five (5) calendar days of receipt of the grievance. Such determination will be a final decision within the Agency which may then be appealed to the State Human Resources Director.

4. GRIEVANCE AND APPEAL PROCESS: The following procedures will be followed for all covered employee grievances and appeals. An employee may not proceed to another level without first exhausting his/her agency remedies in the order presented below. An employee may appeal to the State Human Resources Director when all administrative remedies to secure relief within the Agency have been exhausted.

4.1 Any covered employee of the SCDC may file a grievance concerning a legitimate grievable action. SCDC Form 16-33, "Grievance Report," must be fully completed by the employee and returned (or, if mailed, postmarked) to the Division Director of Human Resources, Employee Relations Branch, within 14 calendar days of the effective date of the action to be considered. Upon receipt of the form, the Division Director of Human Resources, or an approved designee may:

- Confer with the responsible appropriate Director's staff member or designee to determine if the grievance can be resolved informally by overturning or reducing the severity of the corrective action taken.
- If the grievance cannot be resolved informally by the responsible appropriate Director's staff member or designee, forward the form to the Office of General Counsel within five (5) calendar days.

4.2 General Counsel Review: Upon receipt, an attorney from the Office of General Counsel will be assigned the grievance and will be responsible for conducting an investigative review of all pertinent documentation and related SCDC policies/procedures. A summary report of facts will be prepared and a recommendation will be forwarded to the appropriate Director's staff member within 25 calendar days. If necessary, a non-adversarial fact-finding conference may be scheduled by the Office of the General Counsel and may include the grievant, relevant witnesses, the reprimanding authority, and any other individuals deemed necessary by

the attorney assigned the grievance. The following guidelines may apply to such hearing:

- each individual may be called to testify separately and alone;
- testimony may not be made under oath and will not be recorded;
- cross-examination will not be allowed;
- a grievant may be represented by counsel; (However, such representation will be at the grievant's own expense.)
- the grievant may ask Agency employees to submit statements, present personal testimony, or otherwise participate in the grievance process. However, unless the employee is issued an official directive and/or subpoena, the employee has the right to refuse to participate. In addition, the appropriate Director's staff member, Division Director, or Warden has the right to limit the number of employee and Agency witnesses asked to testify if participation in the grievance process poses a staffing and/or security problem or other hardship on the division or facility, provided that the specified number of witnesses are equal for both the Agency and the employee.

Upon conclusion of the conference, a summary report of facts will be made and forwarded as described in Section 4.2, above.

4.3 The Director's Staff Review: The appropriate Director's staff member receiving the summary report will be responsible for reviewing the facts and for making a determination to uphold, reverse, or modify the grievance action. The appropriate Director's staff member's response will be made in writing to the grievant within five (5) calendar days. The grievant may grieve the Director's staff member's decision to the Agency Director within five (5) calendar days of his/her receipt of the response from the appropriate Director's staff member.

4.4 Agency Director Review: The Agency Director will respond in writing to the grievant indicating a final decision within five (5) calendar days from receipt of the grievance. The Agency Director's response represents the Agency's final ruling concerning the grievance.

4.5 External Appeal: The grievant may appeal the Agency's final ruling to the State Budget and Control Board, Office of Human Resources, State Human Resources Director, within ten (10) calendar days of his/her receipt of the Agency Director's response or within 55 calendar days from the initial date the grievance was filed within the Agency, whichever is later.

5. TIME PERIODS: The Agency should complete its internal grievance process including the Director's final decision on any grievances within 45 calendar days from receipt of Form 16-33, "Grievance Report," to the Division of Human Resources, Employee Relations Branch. Failure to act within 45 days will be considered a decision against the grievant from which s/he may appeal to the State Human Resources Director, State Budget and Control Board, Office of Human Resources. The 45 day calendar period for internal departmental action may only be waived by a signed mutual agreement. Internal time periods for the Agency's internal grievance process (Section 4., above) are guidelines for the convenience of the Agency and are not binding upon the Agency. In the event that an internal time period lapses, the grievant should proceed to the next level of the grievance process.

6. LEAVE: Any time away from normal job duties during the grievance or appeal process will be charged to the employee as time worked if the employee is involved in official grievance or appeal business such as, but not limited to, scheduled meetings with the Division of Human Resources, Employee Relations Branch,

Office of General Counsel, or Office of Human Resources. Any time used to handle official grievance or appeal business during scheduled work hours must be approved by the employee's supervisor and is subject to verification by the Division Director of Human Resources or designee. Furthermore, any time away from normal job duties during scheduled work hours for the purpose of general follow-up, or unscheduled meetings to inquire as to the status of a grievance or appeal, will be charged to the employee as annual leave. All annual leave must be approved in accordance with SCDC Policy/Procedure ADM-11.08, "Employee Leave."

7. CORRESPONDENCE: All original grievance correspondence, transfer of records, and relative memoranda addressed to inter-department individuals/offices will be "hand carried" from one office/individual to another. Grievance correspondence to individuals/offices outside the Agency (to include correspondence to the grievant) will be sent U.S. Mail, Certified, Return Receipt Requested. (All copies of the receipt information will be maintained on file by the sender.) A copy of the correspondence will be forwarded to the Division of Human Resources, Employee Relations Branch. An employee who files a grievance and misses a deadline or fails to meet with the Agency's attorney for an investigative review will not be excused because s/he neglects to provide the Agency with a current address or fails to retrieve his/her certified mail.

8. REPRESENTATION BY COUNSEL: A grievant may be represented by counsel; however, such counsel will be at the grievant's expense. Upon notification that a grievant is represented by counsel, the Division Director of Human Resources or designee will inform the South Carolina Department of Corrections General Counsel and all interested parties within the Agency so as to ensure that all material and information pertinent to the case are forwarded to counsel for the grievant collaterally as it is presented to the grievant. Such correspondence will be sent to the employee's attorney by U.S. Mail, Certified, Return Receipt Requested. (All copies of the receipt information will be maintained on file by the sender.) A copy of all such correspondence will be forwarded to the Division of Human Resources, Employee Relations Branch.

#### 9. DEFINITION(S):

Appropriate Director's Staff Member refers to the Director of Office of Budget and Resource Management, Director of Programs and Services, Director of Health Services, the General Counsel, the Inspector General, the and the Division Director of Operations.

EMPLOYEE OR GRIEVANT as used throughout this policy/procedure refers to a covered state employee who has successfully completed a probationary period in a full-time equivalent position with the South Carolina Department of Corrections or another South Carolina state agency.

SIGNATURE ON FILE

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s/Jon E. Ozmint, Director

ORIGINAL SIGNED COPY MAINTAINED IN THE DIVISION OF POLICY DEVELOPMENT.